

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

EXETER FINANCE CORP.

and

**BRADLEY GOLDOWSKY, an
Individual**

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CASE NO.: 03-CA-158382

**RESPONDENT EXETER FINANCE CORP.’S MOTION FOR AN EXTENSION OF
TIME TO RESPOND TO THE NATIONAL LABOR RELATIONS BOARD’S NOTICE
TO SHOW CAUSE**

Respondent, Exeter Finance Corp. (“Respondent”), by and through undersigned counsel, hereby files its Motion for an Extension of Time to respond to the National Labor Relations Board’s (the “Board”) Notice to Show Cause. Respondent respectfully requests a sixty (60) day extension of its time to respond to the Notice to Show Cause from February 24, 2016 until Monday, April 25, 2016.¹

Charging Party, Bradley Goldowsky (“Goldowsky”),² filed a charge in this matter on August 20, 2015, alleging that Respondent’s arbitration agreement, which prohibited class treatment of signatory employees’ claims against Respondent, and Respondent’s motion to enforce that arbitration agreement and compel arbitration in *Goldowsky v. Exeter Finance Corp.*, Case No. 1:15-cv-00632 (W.D.N.Y.), violated the National Labor Relations Act. An Amended Complaint was issued on December 3, 2015 noticing a hearing on Goldowsky’s claims for February 10, 2016. On January 12, 2016, Counsel for the General Counsel (“CGC”) moved to transfer proceedings to the Board and for summary judgment. On January 20, 2016, Respondent

¹ The sixtieth (60) day falls on Sunday, April 24, 2016, and thus Respondent respectfully requests until the next business day – Monday, April 25, 2016 – to submit its response.

² Goldowsky brought this charge on behalf of himself and all others similarly situated, including 19 individuals listed in an addendum to the charge.

responded to CGC's motion, consenting to the transfer of proceedings to the Board but opposing summary judgment. On February 10, 2016, the Board issued an Order transferring proceedings to the Board and indefinitely postponing the hearing, and issued a Notice to Show Cause why CGC's summary judgment motion should be denied. The Board set February 24, 2016 as Respondent's deadline to respond to the Notice to Show Cause.

Respondent respectfully requests a sixty (60) day extension of its time to respond to the Notice to Show Cause from February 24, 2016 until Monday, April 25, 2016. This case involves numerous complex legal issues that have just recently been addressed by the Board and Courts of Appeals. *See, e.g. Murphy Oil USA, Inc. v. NLRB*, 2015 WL 6457613 (5th Cir. Oct. 26, 2015); *Price-Simms, Inc.*, 363 NLRB No. 52 (2015); *Amex Card Services Company*, 363 NLRB No. 40 (2015); *On Assignment Staffing Services, Inc.*, 362 NLRB No. 189 (2015). Respondent requires the additional time to ensure that it can effectively address the issues before the Board and, specifically, how recent Board and Court of Appeals cases affect the Board's analysis in this case. In addition, Christopher C. Murray of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. has recently joined Respondent's team to assist with preparing the response to the Notice to Show Cause. However, Mr. Murray has the following open matters, upcoming deadlines, and prior commitments that necessitate Respondent's requested extension:

- February 26, 2016: Defendants' reply brief in further support of summary judgment is due in *Newman v. Gagan LLC et al.*, Case No. 2:12-cv-248 (N.D. Ind.).
- March 7, 2016: Settlement conference in *Woods v. Breads of the World, LLC et al.*, Case No. 2:15-cv-02618 (S.D. Ohio).

- March 17, 2016: Defendant's petition for review is due to the Supreme Court of Texas in *Parallel Networks, LLC v. Jenner & Block LLP*, Case No. 16-0080.
- March 18, 2016: Appellant's brief is due to the Second Circuit Court of Appeals in *Patterson v. Raymours Furniture Company, Inc.*, Case No. 15-2820.
- March (anticipated): Hearing before the Johnson Superior Court in Indiana on order to show cause why Defendants should not be found in contempt in *Separators, Inc. v. Carmichael et al.*, Case No. 41D04 1509 PL 00091.
- Throughout February and March, Mr. Murray will be required to devote time to preparing for and taking the depositions of fifteen (15) opt-in plaintiffs in a nationwide collective action (*Crawford v. Professional Transportation, Inc.*, Case No. 3:14-cv-18 (S.D. Ind.)), and taking the depositions of ten (10) opt-in plaintiffs in another nationwide collective action (*Smith v. Professional Transportation, Inc.*, Case No. 3:13-cv-00221(S.D. Ind.)).
- During the week of April 2-10, 2016, Mr. Murray will be on a pre-planned vacation during his children's spring break.

Moreover, there will be no prejudice to CGC or to the Charging Party by granting such an extension; unlike a discharge case, for example, in the instant case, there is no possible monetary or reinstatement remedy that requires immediacy in deciding the issues before the Board. Lastly, Respondent has reached out to CGC, Eric Duryea, and counsel for the Charged Party, Michael J. Lingle of Thomas & Solomon LLP, to inform them of Respondent's request. CGC has informed Respondent that he consents to a thirty (30) day extension of Respondent's deadline, while Mr. Lingle has informed Respondent that he also consents to a thirty (30) day extension of Respondent's deadline and takes no position on a sixty (60) day extension.

Therefore, for the reasons stated above, Respondent respectfully requests a sixty (60) day extension of its time to respond to the Notice to Show Cause from February 24, 2016 until Monday, April 25, 2016.

New York, New York
February 17, 2016

Respectfully Submitted,

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.

/s Frank Birchfield
Frank Birchfield
1745 Broadway
22nd Floor
New York, NY 10019
Telephone: (212) 492-2500
Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 17, 2016, the aforesaid Motion for an Extension of Time to respond to the National Labor Relations Board's Notice to Show Cause was electronically filed using the NLRB E-Filing system, and copies were sent via electronic mail to Eric Duryea, Counsel for the General Counsel (eric.duryea@nlrb.gov), and Michael J. Lingle, counsel for the Charging Party (mlingle@theemploymentattorneys.com).

/s Frank Birchfield
Frank Birchfield

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